

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 323 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIKHABHAI SOMABHAI

Versus

PRAHALADBHAI LAXMANBHAI SHAH

Appearance:

MR PR THAKKAR for Appellants

MR PB MAJMUDDAR for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/01/97

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties.

2. As a result of the hearing and discussion, a consensus has been arrived at between the learned counsel, on the basis of which directions as narrated hereinbelow are given.

3. As a result of the hearing it appears that the controversy centers round the interpretation and identification of the property which is the subject matter of the suit. In this context a specific and exhaustive reference has been made to the subject matter of the suit by the plaintiff in para 1 of both Exh.5 as also the same para of the plaint. As against this, the substantial contentions on the part of the defendant are to the effect that the specific land (and the specific area) which has been made the subject matter of the suit by the plaintiff, is neither of the ownership nor in possession of the defendant, inasmuch as the same has been acquired by the Government under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976, and in this context a number of documents have been produced on the record of the case before the trial court. It is the contention of the defendants-appellants herein that the trial court has not correctly appreciated the scope and effect of the contentions and has therefore failed to correctly identify precisely the subject matter of the suit and injunction application i.e. the location and area of the specific land which is the subject matter of the suit, and which would be somewhere within and part of survey no.52 of village Manjalpur, Vadodara. Thus, the identification and location, with reference to the specific part of survey no.52, and with reference to the particular area, which is the subject matter of the suit is the crux of the matter. It appears that the trial court has not examined these aspects of the matter, particularly with reference to the documentary evidence relied upon by the defendants. If the controversy between the parties is examined from this aspect, and if it is found that the defendant is neither the owner nor in possession of that piece of land which is the subject matter of the suit, then obviously no injunction can or need be issued. Conversely, if the defendant is in possession of any land which is the subject matter of the suit and is proposing to make any construction thereon, or is likely to make any construction thereon, an injunction as sought for by the plaintiff may be justified.

4. Thus, looking to the nature of the controversy and in accordance with the consensus referred to above, it is directed that the impugned order is quashed and set aside and the trial court is directed to rehear Exh.5 in accordance with law with reference to the documentary and other evidence on record, in the light of the above observations. It is understood that the trial court, while rehearing and redeciding Exh.5, shall not be influenced by the previous order passed below Exh.5.

5. It is further directed that although technically the impugned order is quashed and set aside, the same injunction and direction as issued by the trial court below Exh.5, shall continue to operate by way of an order passed by this court in this appeal, until Exh.5 is reheard and decided afresh by the trial court.

6. This appeal is accordingly disposed of with no order as to costs.

7. It is directed that the trial court shall rehear Exh.5 as expeditiously as possible, looking to the age of the suit.

8. Direct service permitted.
